

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Dropped date - 13/6/2003

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Application No. 448/2001

Applicant(s) :- Hikasonay Kakah

Respondent(s) :- U.O.T. Tom

Advocate for the Applicant :- B.K. Sharma, S. Sarma, U.K. Fair
Miss S. Das

Advocate for the Respondent :- Case

Notes of the Registry	Date	Order of the Tribunal
This is application in form C. F. for Rs. 50/- deposited vide IP <u>1366788511</u> Dated <u>27.9.2001</u> <i>By Registrar</i> <i>PD</i>	<u>27.11.01</u>	Heard Mr. S. Sarma, learned counsel for the applicant. The application is admitted. Call for the records. List on 1.1.2002 for written statement and further order.
<i>Slips received. Notice referred and sent to SAs for giving the remediality</i> <i>b 19/12/01</i>	<u>1.1.02</u>	<u>I.C.U. Shar</u> Member Vice-Chairman mb List on 29.1.2002 to enable the respondents to file written statement.
<i>DIN. 4515 to 4517</i> <i>3rd 11/12/01</i>	<u>29.1.02</u>	<u>I.C.U. Shar</u> Member Vice-Chairman mb Mr. B.C. Pathak, learned Addl. C.G.S.C. submitted that he has entered appearance on behalf of the respondents and pressed for time to file written statement. List on 4.3.2002 for order.
<i>No. wks has been filed</i> <i>3rd 28.1.02</i>	<u>28.1.02</u>	<u>I.C.U. Shar</u> Member Vice-Chairman mb

4.3.02 List on 2.4.2002 to enable the Respondents to file written statement.

IC Usha
Member

L
Vice-Chairman

mb

2.4.02 At the request of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the Respondents four weeks time is allowed to file written statement.

Y List on 6.5.2002 for orders.

IC Usha

Member

mb

23. 4. 2002 6.5.02 Written statement has been filed. List the matter for hearing on 3/6/2002. The applicant may file rejoinder, if any, within two weeks from today.

IC Usha
Member

L
Vice-Chairman

mb

3/5/02 3.6.2002

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.

IC Usha
Member

L
Vice-Chairman

nkm

Boefam
-11/6/02

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

W.P.(C) No. 1142 of 2003

Appellant

Petitioner

Respondent

Opposite Party

Appellant
For

MR. C. Choudhury, Sr. C. S. I.

Petitioner

MR. Bipul Sarma

Respondent
For

Opposite Party

Noting by Officer or
Advocate

Serial

Date

Office notes, reports, orders or proceedings

Name of the Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	3	4

WP(C) No.1142/03

PRESENT

**HON'BLE CHIEF JUSTICE MR. J.CHELAMESWAR
HON'BLE MR.JUSTICE B.P.KATAKEY**

18.07.2007

(Katakey,J)

Heard Mr. H Rahman, learned Assistant Solicitor General of India for the petitioner. None appears for the respondent.

Mr. Rahman, learned Assistant Solicitor General has submitted that though the petitioner has challenged the order dated 3.6.2002 passed by the Central Administrative Tribunal, Guwahati Bench in OA No.448/2001, the petitioner confines his argument relating to the necessity of filing application by the respondent so as to enable the department to regularize the period of absence of the applicant/respondent from service, from 8.3.99 to 22.3.2000.

The Tribunal by order dated 3.6.2002 has observed that since vide order dated 10.3.2000 passed in OA No.88/1999, the applicant was directed to be posted in the account cadre and not in the general cadre, which attains finality, the respondents are to give effect to the order and take all necessary steps as per law to post the applicant in accounts line.

The petitioner admittedly did not challenge the earlier order of the Tribunal dated 10.3.2000 passed in OA No.88/1999 setting aside the order dated 25.2.99 whereby and whereunder the respondent was transferred out from accounts line to general line. It is also not in dispute that during pendency of the said O.A., the order dated 25.2.99 was kept in abeyance by the order of the Tribunal. The Tribunal by the aforesaid order dated

[Signature]

URGENT

Noting by Officer or advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
<p>Central Administrative Tribunal केन्द्रीय प्रशासनिक अधिकरण</p> <p>26 AUG 2007</p> <p>Guwahati Bench. गुवाहाटी बायापीठ</p>	2	3	<p>10.3.2000 allowed the O.A by setting aside the order dated 25.2.99 with all consequential relief.</p> <p>That being the position, the authority naturally cannot refuse to regularize the period from 8.3.99 to 22.3.2000, however, on obtaining application from the respondent, as the said period cannot be treated as absence from duty by the respondent.</p> <p>The contention of the petitioner is that unless there is a formal application filed by the respondent, the said period cannot be regularized.</p> <p>Keeping in view the above, we dispose of the writ petition directing the petitioner to regularize the aforesaid period on obtaining an application from the respondent. It is, however, made clear that the said period has to be treated as on duty.</p> <p>Writ petition is accordingly disposed of. No cost.</p>

Sd/- B.P. Katakey. Sd/- J. Chelameswar.
JUDGE. CHIEF JUSTICE.

Memo No. HC.XXI. 27, 939 - 41 R.M. Dtd. 9/8/07

Copy forwarded for information and necessary action to:-

1. The Union of India, represented by the Secretary to the Govt. of India, Ministry of Communication, Department of Posts, New Delhi through the Superintendent of Post Offices, Department of Posts, Nalbari-Barpeta Division, Nalbari.
2. The Deputy Registrar, Central Administrative tribunal Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati - 781005.
3. Shri Hiranmoy Kakati, Public relation Inspector, Barpeta Head Post Office, Barpeta, Dist. Barpeta, Assam.

By order

ppb
Asstt. Registrar (B)
Guahati High Court, Guwahati.

Chawdhury
7/8/07

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IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

W.P.(C) No. 1142 of 2003

Appellant

Petitioner

The Union of India & ors
versus
Sri. Dibranmoy Kakati.

Respondent

Opposite Party

Appellant

For

Petitioner

MR. C. Choudhury, S.C.,
MR Bipul Sarma.

Respondent

For

Opposite Party

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

108 - 2 SEP 2005

Guwahati Bench.
গুৱাহাটী বৰ্ষায়ৰীত

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

W.P. (C) No. 1142 of 2003

BEFORE

HON'BLE THE CHIEF JUSTICE MR. B.K. ROY
THE HONBLE MR. JUSTICE P.G.AGARWAL

ORDER

19.8.2005

B.K. Roy, C.J.:- Mr. B. Sarma, learned counsel appearing on behalf of the Petitioner has submitted that this Writ Petition has become infructuous and the Petitioner does not want to press this Writ Petition.

[2] Consequently, we dismiss this Writ Petition as not pressed.

Sd/- P.G. Agarwal.
JUDGE.

Sd/- B.K. Roy.
CHIEF JUSTICE.

Memo No. HC.XXI. 171657- 58 /R.M. Dtd. 25.8.05

Copy forwarded for information and necessary action to:-

1. The Union of India, represented by the Secretary to the Govt. of India, Ministry of Communication, Department of Posts, New Delhi through the Superintendent of Post Offices, Department of Posts, Nalbari-Barpeta Division, Nalbari.

2. The I/C Deputy Registrar, Central Administrative Tribunal Guwahati Bench Rajgarh Road, Bhangaghar, Guwahati-781005. He is requested to acknowledge the receipt of the following records. This has a reference to his letter No. C.A.T/GHY/68/2001/Judl./491 Date 30.6.2003.

Enclos:-

1. O.A. 448/01 Part 'A' with Judgment.
2. C.P. 41/02 Part 'A'.

By order

Asstt. Registrar (I&E)
Guwahati High Court, Guwahati.

24/8/05

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 448 of 2001

Date of Decision. 3.6.2002

— Shri Hiranmoy Kakati

Petitioner(s)

Mr B.K. Sharma, Mr S. Sarma, Mr U.K. Nair
and Ms U. Das

Advocate for the
Petitioner(s)

— Versus —

— The Union of India and others

Respondent(s)

— Mr B.C. Pathak, Addl. C.G.S.C.

Advocate for the
Respondent(s)

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K. K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.448 of 2001

Date of decision: This the 3rd day of June 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Hiranmoy Kakati
Public Relation Inspector,
Barpeta Head Post Office,
Barpeta.

.....Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Nair and Ms U. Das.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Communication,
Department of Posts,
New Delhi.

2. The Chief Post Master General,
Department of Posts,
Guwahati, Assam.

3. The Superintendent of Post Offices,
Department of Posts,
Nalbari-Barpeta Division,
Nalbari.

.....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The legitimacy of the order dated 26.12.2000 issued
by the Superintendent of Post Offices, Nalbari-Barpeta
Division, Nalbari vide Memo No.B-190/Ch-II is the subject
matter of this proceeding in the following circumstances:

The applicant was working as Accountant in the Head
Post Office under the respondent Nos.2 and 3. By order

dated 25.2.1999 the order dated 9.12.1998 was modified. By the order dated 9.12.1998 the applicant who was working as HSG-II Accountant, Barpeta HO was relieved to enable him to join as Sub Post Master (SPM for short), Kaithalkuchi SO. By the modified order dated 25.2.1999, the applicant was to join as SPM, Santinagar SO. The aforementioned order transferring him out from the accounts line to the general line was assailed before this Tribunal in O.A.No.88 of 1999. The said O.A. was finally adjudicated upon and by Judgment and Order dated 10.3.2000 the application was allowed. The Bench held that the action of the respondents in transferring the applicant from the accounts line to the general line was unlawful and accordingly the same was set aside. It may also be mentioned that by order dated 30.3.1999 in Misc. Petition No.87 of 1999 (in O.A.No.88/99) the order dated 25.2.1999 was kept in abeyance. The Tribunal by Judgment and Order dated 10.3.2000 in O.A. NO.88/99 set aside the order dated 25.2.1999 and allowed the O.A. with all consequential benefits. The applicant, thereafter intimated the Judgment and Order of the Tribunal dated 10.3.1999 to the authority and prayed for granting him the consequential benefits. By the impugned order dated 26.12.2000 the Superintendent of Post Offices informed the applicant that he was absent from 8.3.1999 to 22.3.2000 and therefore, the said period could not be regularised. Hence this application.

2. The full text of the impugned order dated 26.12.2000 reads as follows:

"Sub: OA No.88/99 filed by Sri H. Kakati Acctt,
HO - UOI & others.

Ref: CO's/GH letter No.Vig/5/xxIII/93 dtc. 15-11-2000

In pursuance of CO's/GH letter No. noted above, I am directed to intimate that your case of regularisation of the period from 8-3-99 to 22-3-2000 was forwarded to CO/GH vide this office letter of.....

of even no dtd. 27-10-2000. The Circle Office observed that you did not join in your new post as SPM, Santinagar SO, instead filed the OA mentioned above and while admitting the OA on 26-3-99 the Hon'ble CAT did not pass any order staying the transfer order. You failed to join even then instead filed an M.P.No.87/99 in the said OA and obtained an interim on 30-3-99 to rejoin at Barpeta HO. But you did not rejoin at Barpeta HO nor pursued with authority for necessary order. You rejoined at Barpeta HO only on 23-3-2000 that too after receipt of CAT's order dtd. 10-3-2000 setting aside the transfer order. The CO/GH observed that you remained out of office willfully.

In view of the above, the period of absence from 8-3-99 to 22-3-2000 can not be treated as duty in term of FR-54(A), as intimated by CO/GH.

This is for favour of your information."

As per the order the applicant, on being relieved was to join his new posting at Santinagar SO. Instead of joining the post the applicant obtained an interim order from the Tribunal to rejoin at Barpeta HO. But, the applicant did not rejoin at Barpeta, though he joined at Barpeta HO on 23.3.2000 on receipt fo the Tribunal's order. The order dated 25.2.1999 directing the applicant to rejoin as SPM, Santinagar SO, on modification of the order dated 9.12.1998, was stayed bythe Tribunal on 30.3.1999 in M.P.No.87/99. When the order was stayed the order dated 25.2.1999 was inoperative. Finally, the O.A. was disposed of on 10.3.2000. In the set of circumstances, when the very order dated 25.2.1999 was stayed the applicant could not be held guilty for absence from duty. At least, after the order dated 10.3.2000 the respondents ought to have regularised the said period from 8.3.1999 to 22.3.2000 instead of refusing to treat the said period as on leave. The provisions of FR-54(A) is patently not applicable in the instance case. When the very order dated 25.2.1999 was kept in abeyance the applicant could not be held to be absent from duty.

3. We have heard Mr S. Sarma, learned counsel for the applicant and Mr B.C. Pathak, learned Addl. C.G.S.C. at length. Considering all the aspects of the matter we set aside the Memorandum dated 26.12.2000 and direct the respondents to regularise the period of absence of the applicant and pass necessary consequential order thereafter.

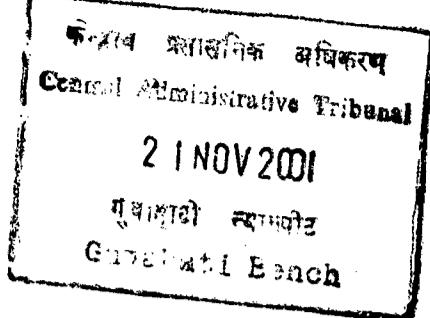
4. In view of the order dated 10.3.2000 passed by this Bench in O.A.No.88 of 1999 the applicant is to be posted in the Accounts Cadre and not in the General Cadre. Since the said order attained finality, the respondents are to give effect to the order and take all necessary steps as per law to post the applicant in the accounts line.

5. With the above observation the application is allowed. There shall, however, be no order as to costs.

K K Sharma
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

D. N. Chowdhury
(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Title of the case : O.A. No. 448 of 2001

Between

Shri Hiranmay Kakati Applicant.

AND

Union of India & ors Respondents.

I N D E X

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Filed by : Usha Das.

Regn. No. :

File : WS7\OA-26

Date :

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Filed by
the applicant through
Alsha Das.
Advocate
21/11/2001

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act, 1985)

O.A. No. 448 of 2001

BETWEEN

Shri Hiranmoy Kakati,
Public Relation Inspector,
Barpeta Head Post Office,
Barpeta.

..... Applicant.

VERSUS

1. Union of India,
Represented by the Secretary to the Govt. of India,
Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi.
2. The Chief Post Master General
Department of Posts,
Meghdoot Bhawan, Guwahati-1,
Assam.
3. The Superintendent of Post Offices,
Department of Posts,
Nalbari-Barpeta Division,
Nalbari-781335. Respondents.

PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE :

This application is directed against the orders dated 26.12.2000 issued by the Superintendent of Post Offices, Nalbari-Barpeta Division, Nalbari. This application is also directed against the action of the respondents in not implementing the Judgement and order dated 10.3.2000 passed in OA No. 88/99 by the Hon'ble Tribunal.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the present applicant is aggrieved by the action of the respondents in not complementing the Judgement and order dated 10.3.2000 passed in OA No.88/99 by this Hon'ble Tribunal, by issuing various orders. The applicant being aggrieved by the issuance of the order vide memo No.B/A-19/Ch-II dated 25.2.99 approached the Hon'ble Tribunal by way of filing OA No.88/99 seeking setting aside of the said order dated 25.2.99. The Hon'ble Tribunal while admitting the OA issued notice to the respondents. Thereafter the applicant preferred a M.P. No.87/99 in the said OA and the Hon'ble Tribunal was pleased to pass interim order on 30.3.99. However, disobeying the said order the respondents did not allow the applicant resume his duty. The OA thereafter came up for hearing on 10.3.2000 and the Hon'ble Tribunal after the parties to the proceeding was

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pleased to allow the said OA by setting aside the impugned order of transfer dated 25.2.2000 with a further direction to grant all consequential service benefits. The respondents pursuant to the interim order dated 30.3.99 the respondents issued an order dated 15.2.2000 by which the present applicant has been posted as Public Relation Inspector under the Barpeta Headquarter. The applicant on receipt of the Judgement and order dated 10.3.2000 submitted the said before the concerned authority for implementation of the same but till date nothing has been done so far it relates to his posting in the Accounts Cadre. Apart from that the period which he was not allowed to join pursuant to the interim order dated 30.3.99 passed in M.P.No.87/99 in OA No.88/99 by the Hon'ble Tribunal has not been regularised. Situated thus, the present applicant preferred a representation praying for regularisation of those period. The respondents i.e. the Suptd of Post Offices vide it's letter dated 26.12.2000 rejected his such prayer for regularisation of the period with effect from 8.3.99 to 22.3.2000 which was protected by the interim order dated 30.3.99 passed in M.P.No.87/99. Impugning the aforesaid order dated 26.12.2000 along with a prayer to allot him the post of Accountant under the Accounts cadre, the present applicant has preferred the instant OA.

This is the crux of the matter for adjudication in the present application and the detailed facts of the case are placed here in below along with the grounds and relief sought for.

4.2. That the applicant is a citizen of India and a permanent resident of Assam as such he is entitled to all the rights, privileges and protection guaranteed by the Constitution of India.

4.3. That the applicant earlier approached this Hon'ble tribunal making a grievance against the order dated 25.2.99 issued by the respondent No.3 transferring him to Santinagar Sub Post Office as Sub Post Master which is the post belongs to General Cadre.

*25/2/09
Jnt/ln*
A copy of the said order dated 25.2.99 is annexed herewith and marked as Annexure-A.

4.4. That prior to issuance of the Annexure-A order dated 25.2.99, the respondents issued an order dated 19.12.98 by which he was sought to be transferred to Kaithalkuchi Sub P.O. in the capacity of Sub Post Master, a post belongs to General Cadre. The applicant pointed out the aforesaid anomaly cropped up in the said order dated 19.12.98. Thereafter the respondents issued a modification order canceling the said order dated 19.12.98.

A copy of the said order dated 19.12.98 is annexed herewith and marked as Annexure-B.

4.5. That the respondents modifying the order dated 19.12.98 issued the Annexure-A order dated 25.2.99 by which he was again sought to be transferred to a post belongs to General Cadre.

Gen Cadre - Accs 100/8

4.6. That the applicant state that under the Postal Department there are two district cadres namely, General and Accounts Cadre. Persons belongs to General Cadre can come to the Accounts cadre only by way of passing Departmental Examination meant for the same. The applicant also during the service tenure appeared in the examination for Accounts service i.e. Post Office and Railway Mail Service Accounts Examination in the year 1979 and he was declared successful. Pursuant to the said result the applicant was posted and allotted the job of Accountant in the Barpeta Head Office with effect from 12.5.85. On 1.7.86 the case of the applicant was considered under the TBOP Scheme and his pay was fixed in the scale of Rs.1400-25-1500-EB-30-2300. Subsequently applicant became qualified to get the benefit of the scheme namely Biennial Cadre Review (BCR) and his pay was further revised upto Rs.1600-2600 with effect from 1.7.96.

4.7. That the applicant begs to state that at the time of consideration of his case for Time Bound One Promotion scheme (TBOP), option was called for asking him his willingness to remain in the Accounts Cadre by issuing an order dated 24.4.86. Subsequently, another option was called for from the applicant at the time of consideration of his case under (BCR) Biennial Cadre Review Scheme and accordingly the applicant gave his option for Accounts Cadre on 6.3.95.

Copies of the letter dated 24.4.86 and 6.3.95 are annexed herewith and marked as Annexure-C & D respectively.

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4.8. That the applicant begs to state that the Respondents while passing the order dated 25.2.99 transferring him to a post under the General Cadre have failed to take into consideration the Rules mentioned in the FRSR. On the other hand the respondents did not took into consideration the Rules regarding transferability outside the cadre while passing the said order.

4.9. That the applicant being aggrieved by the aforesaid order dated 25.2.99 moved the Hon'ble Tribunal by way of filing OA No.88/99 challenging the legality and the validity of the said order. The applicant also preferred M.P. vide No.87/99 praying for an interim order directing the respondents not to transfer him from his present place of posting suspending the operation of the said impugned order dated 25.2.99.

A copy of the said interim order dated 30.3.99 passed in M.P.No.87/99 is annexed herewith and marked as Annexure-E.

4.10. That the aforesaid interim order passed in the M.P.No.87/99 was further continued in its subsequent dates. The applicant thereafter submitted a representation dated 6.4.99 enclosing the said interim order dated 30.3.99 to the respondents, but the respondents did not allow him to resume his service. Thereafter the applicant again preferred a representation to the Supdt.of Post Offices on 17.4.99 apprising about the interim order dated 30.3.99 as well as 9.4.99 but no order allowing him to resume duty has been issued violating the orders passed by the Hon'ble Tribunal.

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The applicant kept on representing the respondents praying for allowing him to resume his duty but nothing has been done by the respondents.

Copies of the representation dated 6.4.99 and 17.4.99 are annexed herewith and marked as Annexure-F & G.

4.11. That the applicant begs to state that the respondents pursuant to the interim orders passed by Hon'ble Tribunal issued an order dated 15.2.2000 by which the present applicant has been posted as Public Relation Inspector. The applicant as stated above was holding the post of Accountant under the Barpeta Head Post Office which is a post belong to Account Cadre. On the other hand the post offered to the present applicant by the said order dated 15.2.2000 is a post under the General Cadre, which is not permissible.

A copy of the said order dated 15.2.2000 is annexed herewith and marked as Annexure-H.

4.12. That the respondents have against repeated their earlier mistake in posting the applicant in a post which is meant for Accounts (qualified) personnel. The entire crux of the matter for adjudication in the earlier proceeding in OA No.88/99 was only on the basis of aforesaid contention. The respondents ought to have applied their mind in allotting the post to the present applicant under General Cadre. The respondents have issued the order only to show that they have complied with the order of the Hon'ble Tribunal without

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looking into the fact under which he is to be posted. Admittedly applicant is an officer belongs to the Accounts cadre and under no circumstances he can be posted in a meant for General Cadre officer.

4.13. That the Hon'ble Tribunal thereafter heard the matter on 10.3.2000 and was pleased to allow the said OA No.88/99 and set aside the impugned order of transfer dated 25.2.99 granting all consequential benefits to the present applicant.

A copy of the said Judgment and order dated 25.2.99 passed in OA No.88/99 is annexed herewith and marked as Annexure-I.

4.14. That the applicant thereafter preferred a representation dated 24.3.2000 enclosing a copy of the judgment and order dated 10.3.2000 praying for his posting and other consequential benefits in the light of the said judgment.

A copy of the said representation dated 24.3.2000 is annexed herewith and marked as Annexure-J.

4.15. That as stated above the respondents by issuing the 15.2.2000 order (Annexure-H) has posted him in a post belongs to General cadre which is illegal. Thereafter the applicant submitted the Annexure-J representation praying for implementation of the judgment and order dated 10.3.2000. The respondents however have not yet implemented

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the same by giving him posting under Accounts cadre along with other consequential benefits. The respondents after a long time issued an order dated 26.12.2000 by which his prayer regarding regularisation of the period w.e.f. 8.3.99 to 22.3.2000 has been rejected. It is noteworthy to mention here that the said respondents himself issued an order dated 10.1.2000 by which the period with effect from 8.3.99 to 11.3.99 has already been regularised.

A copy of the said order dated 26.12.2000 is annexed herewith and marked as Annexure-K.

4.16. That the applicant submits that the respondents have acted illegally in violation of the interim order passed by the Hon'ble Tribunal and failed to take into consideration the judgment dated 10.3.2000 wherein there has been a mention regarding granting the consequential benefits. Admittedly the period in question is covered by the interim order dated 30.3.99 and it's subsequent orders continuing the same until further order. Be it stated here that the contention made in the aforesaid impugned order dated 26.12.2000 regarding his refusal is baseless because of the fact that he submitted the representation dated 6.4.99 as well as 17.4.99 praying for his joining. The respondents even did not allow him to draw his salary for the aforesaid period without any reason. The impugned order has virtually casted stigma on the present applicant stating about the aforesaid period as willful absence with holding any enquiry about the matter.

2

4.17. That the applicant being aggrieved by the aforesaid action on the part of the respondents submitted a detailed representation on 1.2.2001 praying for his posting in the Accounts Cadre as well as regularisation of the period w.e.f 8.3.99 to 23.3.2000 including pay and allowances for the said period, in compliance with the judgment and order dated 10.3.2000 passed in OA No.88/99.

A copy of the said representation dated 1.2.2001 is annexed herewith and marked as Annexure-L.

4.18. That the applicant begs to state that to the best of his knowledge, the respondents have not yet preferred any appeal against the said judgment and order dated 10.3.2000 and same has attained it's finality, and now the respondents can not disregard the said judgment and order passed by the Hon'ble Tribunal.

4.19. That the applicant begs to state that admittedly the respondents have not yet implemented the said judgment and order dated 10.3.2000 and for the non-compliance of the same they are liable to be punished by the drawing up show-cause-contempt proceeding against the respondents.

4.20. That the applicant begs to state that having no other alternative the applicant has come before Your Lordships seeking an appropriate direction towards his posting in the Accounts Cadre as well as for a direction to the respondents to regularise the period w.e.f. 8.3.99 to 22.3.99 with full salary. It is a fit case, wherein Your

24

Lordships may graciously be pleased to issue such direction invoking the interrupt power conferred under Rule 24 of the Central Administrative Tribunal Procedure Rules to meet the ends of justice and to grant the relief as prayed for by the present applicant.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the respondents in issuing the impugned order dated 15.2.2000 (Annexure-H) and 26.12.2000 (Annexure-K) is illegal, arbitrary and violative of the Principles laid down by the Hon'ble Tribunal in It's Judgment and order dated 10.3.2000, passed in OA No.88/99.

5.2. For that there being a judgment and order and which has attained it's finality, the respondents ought not to have issued the impugned orders dated 15.2.2000 and 26.12.2000 violating the judgment and order dated 10.3.2000 passed in OA No.88/99.

5.3. For that the respondents knowing fully well about the issuance of the interim order's dated 30.3.99 and even after submission of the representations highlighting the aforesaid interim orders did not allow the present applicant to resume his duty which is per-se-illegal and contemptuous in nature and the respondents are liable to be punish under the contempt of Court's Proceeding.

5.4. For that non-implementation of Judgment and order dated 10.3.2000 and earlier interim order protecting the service interest of the applicant has resulted in gross violation of the said Judgment and hence the respondents are liable to be proceed for the said violation and appropriate direction need be issued to them to implement the said judgment by modifying the order dated 15.2.2000 and by setting aside the order dated 26.12.2000 granting all the reliefs to the present applicant.

5.5. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

The applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal and factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit

regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash Annexure- H and K orders dated 15.2.2000 and 26.12.2000 with a further direction to the respondents to post him in the Accounts Cadre as Accountant under the Nalbari-Barpeta Division with all consequential service benefits including seniority and salary.

8.2. To direct the respondents to regularise the period w.e.f 8.3.99 to 22.3.2000 with a further direction to pay his salary for the said period with interest @21%.

8.3. Cost of the application.

8.4. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicant prays for an interim order directing the respondents to release his salary w.e.f. 8.3.99 to 22.3.2000 .

10.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 66 788511
2. Date : 27/9/2001
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

2 6

VERIFICATION

I, Shri Hiranmay Kakati, son of Shri B.C.Kakati, aged about 51 years, at present working as Public Relation Inspector in Barpeta Head Post Office, Barpeta, do hereby solemnly affirm and verify that the statements made in paragraphs 23, 42, 45, 46, 48, 472, 418-420 & 5 to 12. are true to my knowledge and those made in paragraphs 1, 41, 43, 44, 47, 49-411, 413 to 417 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 19th day of ... Nov., 2001.

Hiranmay Kakati
(Signature)

DEPARTMENT OF POSTS::INDIA
Office of the Superintendent of Post Offices
Nalbari-Barpeta Division
NALBARI-781335.

Memo. No. B/A-19/Ch-II

Dated at Nalbari the 25-02-99

The following transfer and posting orders are hereby issued in the interest of service to have immediate effect.

1. Sri Mahesh Ch. Barman, LSG Accountant, Divisional office on being relieved on office arrangement will join as Accountant, Barpeta HO vice Sri Hiranmay Kakati transferred.

2. Sri Hiranmay Kakati, HSG-II Accountant Barpeta HO, on being relieved by Sri Mahesh CH. Barman, will join as SPM, Santinagar SO vice the vacant post.

This is in modification of this office Memo of even No. dated 9-12-98 as per the order of Circle Office, Guwahati.

S. S.
(G.G. SINGHA)
Superintendent.

Copy To :

✓ 1-2) Sri H. Kakati (Acc-H) The official concerned. On being relieved they will join their new assignments.

3) The Chief PMG(staff), Assam Circle, Guwahati, for favour of kind information.

4-5) The PM, Nalbari/Barpeta HO for information and n/a.

6-7) P/F

8-11) OC/Spare.

G. G. S.
(G.G. SINGHA)
Superintendent.

Attested
Advocate

Attested
Under
Advocate.

30/3/99

A/572

Box

in 04 88/99

Misc 87/99

10/3/2K OA/akhs

Box 7 p24-30

Qarri over d/o

25.2.99

DEPARTMENT OF POST::INDIA
Office of the Superintendent of Post Offices
Nalbari-Barpeta Division
NALBARI-781335

Memo No. B/A-19/Ch-II

Dated at Nalbari the 09-12-98.

The following transfer and posting orders are hereby issued in the interest of service to have immediate effect.

1. Sri Mahesh Ch. Barman, LSG Accountant, Divisional Office on being relieved on office arrangement will join as Accountant, Barpeta HO vice Sri Hiranmay Kakati transferred.

2. Sri Hiranmay Kakati, HSG-II Accountant, Barpeta HO, on being relieved by Sri Mahesh Ch. Barman will join as SPM, Kaithalkuchi SO vice Sri Chandi Kalita transferred. The posting order of Sri Chandi Kalita has been issued separately.

Transfer and posting order in respect of Sri Hiranmay Kakati (HSG-II) at Sl. (2) above is issued with the concurrence of the Circle Office.

✓
Supdt. of Post Offices
Nalbari-Barpeta Division
NALBARI-781335

Copy to:

1-2. The Officials concerned. On being relieved, they will join their new assignments.

2. The Chief Postmaster General(Staff), Assam Circle, Guwahati for favour of kind information.

3-5. The PM, Nalbari/Barpeta HO for information and necessary action.

6. The SPM, Kaithalkuchi SO for information.

7-9. P/F.

10. OC.

11-15. Spare.

✓
Supdt. of Post Offices
Nalbari-Barpeta Division
NALBARI-781335.

Attested
Under
Advocate.

I, Shri Hiramay Khatri, Off. Accountant
Barpeta H.O. do hereby exercise my option
to continue in the Accounts line in
respect of promotion in O.S.C.
Accountant.

Date -
24/6/36. ^{for} ~~24/6/36.~~
X POST MASTER
BARPETA H. O.
281301.

Hiramay Khatri
Off. Accountant
Barpeta H.O.
281301.

Attested
MS
Annexure.

ANNEXURE-D

Option:

I, Shri Narayan Lakkar, Accountant, Bhopal
do hereby opt to join my pay under P.R. 0.2(1)(v)(i)
on account of 10% promotion (under P.R. 0.2(1)(v)(i))
1-1-75 and to retain my pay from the date of
my next increment of L.S. on terms of Govt.
of India, Ministry of Finance order.

Further I do hereby opt to work on the
Accounts line after P.C.R.

Dt. 6-3-75

Narayan Lakkar
Accountant
Bhopal H.C.

Up
Bardoli H.C. Bhopal
Postmaster

Attested
Lokan
Advocate

Attested

Abdul

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET

Misc APPLICATION NO. 87/99 OF 199
O.R. 88/99

Applicant(s) *Shikamoni Konkati*

Respondent(s) *Union of India and or.*

Advocate for Applicant(s) *M.K. B. K. Sharma*
M.K. S. Sarma

Advocate for Respondent(s) *C.G. S.C.*

Notes of the Registry	Date	Order of the Tribunal
	30.3.99	<p>Present : Hon'ble Mr. Justice D.N.Baruah, Vice-Chairman.</p> <p>Heard Mr. B.K.Sharma, learned counsel appearing on behalf of the applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C. He has no instruction even today.</p> <p>On hearing the counsel for the parties the operation of the impugned Annexure-4 order dated 25.2.99 to the original Application and Annexure-A Order dated 02.02.99 to the Misc. Petition are stayed till 9.4.99.</p>

Certified to be true Copy

প্রাপ্তি প্রাপ্তি

N. S. S.

Section Officer (J)

Central Administrative Tribunal

গুৱাহাটী বৰ্ষাকাৰ, গুৱাহাটী

গুৱাহাটী বৰ্ষাকাৰ, গুৱাহাটী

গুৱাহাটী বৰ্ষাকাৰ, গুৱাহাটী

—/—
Vice-Chairman.

Attested
M. S. S.
Advocate

To,

The Supdt. of Posts Offices,
Nalbari-Barpeta Division, Nalbari - 781335
Through Proper channel.

Dated at Barpeta the 6.4.99

Sub :- Stay order issued dtd. 30.3.99 by the CAT/Guahati Bench in favour of Shri Hiranmay Kakati Accountant, Barpeta H.O.

Sir,

A photo copy of stay order issued by the honourable CAT/Guahati, Bench against your orders No. B/A-19/ Ch-II Dtd. 02-02-99 and No. B/A-19/Ch II Dtd. 25-02-99 is submitted herewith. You are requested to arrange for issuing order for my posting early accordingly and obliged.

Yours faithfully,

Enclo :-

Photo copy of CAT/ Guahati's
Order sheet
Misc Application No. 87/99

Hiranmay Kakati
(Hiranmay Kakati)

Accountant, Barpeta
H.O.

Copy to :-

The Postmaster, Barpeta H.O. for information. He is requested to get me posted at Barpeta H.O. in accordance with the order of CAT.

Yours faithfully ,

Hiranmay Kakati
(Hiranmay Kakati)

Accountant, Barpeta
H.O.

Attested

Allen
Allen
Advocate.

To,

- 22 -

ANNEXURE - 6

The Supdt. of Posts Offices, Nalbari-Barpeta Dn.

Nalbari- 781335

Through proper channel.

Dated at Barpeta the 17-4-99

Sub :- Stay order dtd. 9-4-99 issued by the CAT/ Guwahati, Bench, in favour of Shri Hiranmay Kakati, Accountant, Barpeta H.O. .

Sir,

I beg to state that the Postmaster, Barpeta H.O. did not allow me to join Barpeta H.O. as Accountant on 6-4-99 despite the submission to him the CAT/ Guwahati, Bench order Dtd. 30-3-99. I submit herewith a photo copy of order Dtd. 9-4-99 again today issued by the CAT/ Guwahati, Bench, in favour of my stay. This is in continuation of my letter dtd. 6-4-99.

You are requested kindly to do needful in the matter.

Enclo :-

Photo copy of CAT/ Guwahati's order sheet No. 88/99 Dtd. 9-4-99.

Yours faithfully,

(Hiranmay Kakati)
Hiranmay Kakati

Accountant Barpeta H.O.

Copy to :-

The Postmaster, Barpeta H.O. 781301 for information. He is requested to make arrangement of implementation of CAT/ Guwahati's order No. 88/99 Dtd. 9-4-99 early.

Yours faithfully,

(Hiranmay Kakati)
Hiranmay Kakati
Accountant, Barpeta H.O.

Attested
C. S. N.
Advocate

DEPARTMENT OF POSTS :: INDIA
 Office of the Superintendent of Post Offices :: Nalbari Darpetta Division
 NALBARI-781335

No. B/A-13/Ch-III

Dated at Nalbari the 15-02-2000.

The following transfer and posting orders are hereby issued in the interest of service to have immediate effect.

1. Sri Hiramay Kakati, SPM Santinagar (designate) is posted as PRI(P) Barpeta HO vice Sri Harish Ch. Sarma transferred.
2. Sri Harish Ch. Sarma, PRI(P), Barpeta HO, on being relieved, will join as SPM, Santinagar SO terminating temporary arrangement.
3. Sri Paramananda Das, Officiating SPM, Santinagar SO, on being relieved, will return back to Barpeta HO.
4. Sri Bhabendra Kr. Das, PA, Barpeta HO, on being relieved, will join as SPM, Bartala SO against vacant post.
5. Sri Dinesh Ch. Kakati, PA, Divl. Office, who is working at Nalbari HO temporarily is posted as PA, Nalbari HO against vacant post.

The official at serial 4 i.e. Sri Bhabendra Kr. Das will not get any TA/TP as his transfer order is made at his own request.

 Superintendent of Post Offices
 Nalbari Barpeta Division
 Nalbari-781335.

Copy to:

1. The officials concerned. On being relieved, they will join their new assignment accordingly.
2. The Postmaster, Nalbari/Barpeta HO for necessary action.
3. The SPM, Bartala, Santinagar SO for information.
4. PPs.
5. OC

 Superintendent of Post Offices
 Nalbari Barpeta Division
 Nalbari-781335.

Attested
 [Signature]
 Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. 88 OF 1999

Date of Order - March 10, 2000.

HON'BLE SMT LAKSHMI SWAMINATHAN, JUDICIAL MEMBER

Shri Hiranmoy Kakati,
Accountant, Barpeta Head Post Office,
Barpeta.

- APPLICANT

By Advocates Mr.S. Sarma and Mr.U.K. Nair.

- Versus -

1. Union of India,
Represented by the Secretary to
the Govt of India, Ministry of
Communication, Department of Posts,
Dak Bhawan, New Delhi.
2. The Chief Post Master General,
Department of Posts, Meghdoct Bhawan,
Guwahati-1, Assam.
3. The Superintendent of Post Offices,
Department of Posts, Nalbari-Barpeta
Division, Nalbari-781335.

- RESPONDENTS

By Advocate Mr. A. Deb Roy, Sr.C.G.S.C.

O R D E R
(ORAL)

The applicant is working as Accountant in the Head
Post Office under Respondent No. 2 and is aggrieved by the
order dated 25.2.99 issued by the Superintendent of Post
Offices, Nalbari-Barpeta Division by which he was transfe-
-red from Barpeta HO to Santinagar SO.

Page 2 ..

Attested
J. D. N.
Advocate.

2. According to the applicant, he had appeared in the Accounts Examination and had been declared successful in 1979. He had also submitted his option to work in the Accounts line after becoming qualified to get the benefit of Biennial Cadre Review Scheme by his letter dated 6.3.1995. By his letter dated 24.4.1986, he had also exercised his option to continue in the Accounts line in respect of earlier promotion to L.S.J. (Accountant). The post he was holding at Barpeta Head Office was the post of Accountant HSG-II. Mr. U.K. Nair, learned counsel/ submitted that by the impugned transfer order dated 25.2.1999 he has been transferred to the post of S.P.M. Santinagar S.O. which is a post in the general line and not in the Accounts line. According to him, this transfer order is, therefore, not in accordance with the rules and instructions as the applicant could have been transferred only in the Accounts line where he has been absorbed. However, he does not deny that due to certain problems, the applicant had submitted to the respondents in his letter dated 26/29.11.1997 and 19.12.1997 that he may be shifted to the general line from Accounts line. The learned counsel has also submitted by letter dated 1.1.1998, copy placed on record, the applicant had represented again to the respondents to withdraw his earlier representation, as according to him, his troubles were over.

3. Mr. Nair, learned counsel has relied on the Tribunal's interim order dated 30.3.1999/ which has been continued till 9.4.1999. In this interim order, another

order ...

Attested
U.K.Nair
Advocate

order passed by the respondents has also been stayed namely, the order dated 2.2.1999. Mr. A. Deb Roy, learned counsel for the respondents has submitted that apart from the above representation, the applicant has also submitted to the authorities another representation that because of disruption of education of his children, the impugned order dated 25.2.1999 may be stayed till the end of the academic session in March, 1999. Accordingly, the order transferring the applicant from Accounts line to general line was kept in abeyance by the department's order dated 2.2.1999 on the subject i.e. transfer from Accounts line to General line, although in the order itself, the reference has been made to the fact of children's education which was expected to be completed in March, 1999 with the academic year being completed. According to Mr. Deb Roy, learned counsel, the applicant has been relieved from duty at Barpeta H.C. on 8.3.1999 to assume his duty at Santinagar S.C., keeping in view that the education of his children will not be disturbed as Santinagar falls within Barpeta town.

5. The applicant's counsel has submitted that in spite of the aforesaid interim order passed by the Tribunal on 30.3.1999, the applicant has not been allowed to rejoin his post at Barpeta S.C. Mr. Nair has submitted that the impugned transfer order is bad in law because the applicant was being borne on the cadre of Accounts line which is outside the cadre of General line. He has also contended that even if the applicant had represented to change his transfer order, transferring him to the General line, this has been specifically

withdrawn ...

Attested

M.S.N
Advocate.

withdrawn on 1.1.1998 before the impugned order dated 25.2.1999 was passed. Therefore, he has submitted that in any case, the applicant could not have been transferred by the impugned order dated 25.2.1999 which is not in accordance with the rules.

6. From the reply filed by the respondents, it is noticed that they have relied on a letter giving clarifications regarding applicability of the orders relating to Time Bound One Promotion Scheme and Biennial Cadre Review Scheme. My attention has been drawn to Para-1 of this letter which gives clarification that there is no distinction between the general line and Accounts line under TBOP/BCR Scheme for the purpose of promotion. It appears from the reply that the respondents had agreed to transfer the applicant from Accounts line to General line in pursuance of the applicant's representations given on 29.11.1997 and 19.12.1997. It is also stated that the applicant also stood relieved on 8.3.1999 to assume his post in the general line in Santinagar S.O. as S.P.M.

7. The short issue raised in this application is whether a person who belongs to the Accounts line could be transferred to the general line, even if he himself had wanted the transfer at a given point of time. The contention of the respondents that they had acceded to the request of the applicant for transfer from Accounts line to general line cannot be supported if the same is not in accordance with the relevant rules and instructions. The respondents in their written statement have not drawn our

attention ...

Attested
Under
Advocate

attention to any rule in support of their action in transferring the applicant from Accounts line to general line. In the absence of any such rule, their action cannot be sustained in law.

8. The letter dated 4.10.1996 issued by the Department of Post for certain clarifications in respect of TBOP/BCR scheme which is relied upon by them will not assist them. That clarification deals with the question of implementing the scheme for promotion where it has been stated, inter alia, that there is no distinction between the general line and Accounts line except for the limited purpose of functional necessity. That would not support the respondents' case to transfer the applicant from Accounts line to general line even at his request. It is also seen that even prior to the impugned order dated 25.2.1999, the applicant himself had withdrawn the request. Therefore, it is difficult to understand on what basis the respondents had carried out the transfer and issued the impugned order as they have not placed on record any rule to support their contentions that a person belonging to the Accounts line can be transferred to the general line.

9. It is further seen from the letter dated 2.2.1999 that the respondents have themselves kept in abeyance the applicant's transfer order till the end of the children's academic year i.e. March/1999. The operation of the impugned orders dated 25.2.1999 and 2.2.1.99 have been stayed by the Tribunal in terms of the orders dated 30.3.1999

and 9.4.99 ..

Attested
by
Advocate

and 9.4.1999. In other words, the applicant is deemed to be continuing at Barpeta Head Office as Accountant HSG-II.

Besides, from the facts mentioned above, it would also appear that the respondents have themselves taken contrary decisions with regard to posting of the applicant, subsequent to the orders dated 25.2.1999 and 2.2.1999, by purportedly relieving him on 8.3.1999.

10. It is settled law that who should be transferred and where, is a matter for the appropriate authority to decide and unless the order of transfer is vitiated by malafide or is made in violation of the statutory provisions, the Court should not interfere with it. (See Union of India v. S.L. Abhas, (1993 (2) SLR 585 (SC) and N.K. Singh v. Union of India & Ors, (1994 (28) ATC 246 (SC)). In the present case, the applicant has not alleged any malafide but the transfer order passed by the respondents does not appear to be in accordance with rules and instructions. The contention of the applicant that he could not be transferred out of his line, namely, from Account line to the general line has not been effectively denied by the respondents /appears to be the position in terms of the relevant rules and instructions. If this is so, the impugned order of transfer has been passed in violation of the statutory provisions and on this account, this application is entitled to succeed. This is one of the exceptional circumstances, as noted in the aforesaid cases.

11. Therefore, taking into account the principles of law laid down in the aforesaid cases and in the facts

... and ...

- 7 -

and circumstances of this case, the impugned transfer order dated 25.2.1999 is quashed and set aside with all consequential benefits in accordance with law.

SA/ MEMBER (J)

mk

11/2/99
Attested
B. N. Deka
Guwahati Bar Council

21)

Attested
Lokesh
Advocate.

To,

The Supdt. of Posts Offices,
Nalbari-Barpeta Division, Nalbari-781335.

Through Proper Channel.

Dated Barpeta the 24-03-2000.

Sub :- PRI(P), Barpeta H.O.

Ref :- Your letter No.B/A-13/Ch-III dtd.15/02/2000,

Sir,

I have the honour to state that the CAT/Guahati bench considered my Original Application No.88/99 and gave verdict on 10/03/2000 in favour of me directing the department to afford me all consequential benefits. For the time being and as PRI(P) is a supervisory post and senior post than that of Accountant, I join the post of PRI(P), Barpeta H.O. on 24/03/2000 in honour of your letter under reference awaiting my posting as Accountant in the original line/cadre.

You are requested kindly to post me to the post of Accountant early and obliged.

Yours faithfully,

Hiranmay Kakati
(HIRANMAY KAKATI)

Barpeta H.O.

Arrested
by
C.A.M.

DEPARTMENT OF POSTS::INDIA
Office of the Superintendent of Post Offices
Nalbari Barpeta Division
Nalbari-781335

To

Sri Hiranmoy Kakati
PRI(P), Barpeta HO.

No. B-190/Ch-II

Date :: 26-12-2000,

Sub: OA No. 88/99 filed by Sri H.Kakati Acctt, Barpeta
HO - UOI & others.

Ref: CO's/GH letter No.Vig/S/xxIII/93 dt'd. 15-11-2000

In pursuance of CO's/GH letter No. noted above, I am directed to intimate that your case of regularisation of the period from 8-3-99 to 22-3-2000 was forwarded to CO/GH vide this office letter of even no dt'd. 27-10-2000. The Circle Office observed that you did not join in your new post as SPM, Santinagar instead filed the OA mentioned above and while admitting the OA on 26-3-99 the Hon'ble CAT did not pass any order staying the transfer order. You failed to join even then instead filed an A.P. No.87/99 in the said OA and obtained an interim on 30-3-99 to rejoin at Barpeta HO. But ^{you} did not rejoin at Barpeta HO nor pursued with authority for necessary order. You rejoined at Barpeta HO only on 23-3-2000 that too after receipt of CAT's order dt'd. 10-3-2000 setting aside the transfer order. The CO/GH observed that you remained out of office wilfully.

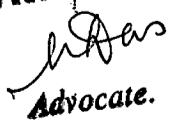
In view of the above, the period of absence from 8-3-99 to 22-3-2000 can not be treated as duty intern of FR-54(A), as intimated by CO/GH.

This is for favour of your information.


Superintendent
Post Offices
Nalbari-Barpeta Division
Nalbari-781335

54 (A)

Attested


Advocate.

To,

The Chief Postmaster-General, Assam Circle,
Guwahati-781001.

Through Proper Channel,
Dated Barpeta the 1st February '2001.

Sub: Consequential Benefits in pursuance of order, CAT/Guwahati Bench on CA No.88/99 Dtd. 10.03.2000.

Ref: SPC/Nalbari No.B-190/Ch II Dtd. 26-12-2000.

Sir,

I beg most respectfully to approach you with this humble petition of mine and hope it will meet with a kind and sympathetic consideration at your hands.

2. That Sir, I have been working as Accountant at Barpeta H.C. Since 12-4-85 upto 11-3-99. The supt of posts offices, Nalbari Barpeta Dvn. Nalbari issued order of my transfer vide his letter No.B/A 19/Ch-II dtd. 9-12-98 to Kaithalkuchi So and thereafter vide his letter No.B/A-19/Ch II dtd 25-02-99 to Shantinagar So as Sub- Postmaster.

3. That Sir, I came out Successful in P.C. & R.M.S. Examination 1979 and being ~~was~~ qualified Accountant I opted for Accounts line on Time bound one promotion and BCR(H.S.G.-21) granted vide SPC/Nalbari No.B/A-19/Ch-II dtd. 30-3-91 and and No. SPC/Nalbari No.B/A-19/Ch-II dtd. 30.1.95 respectively.

4. That Sir, therefore, I filed an application No.88/99 and an M.P. No.87/99 on the C.A. in the central Administrative Guwahati Bench when I was transferred to Shantinagar So against the order of SPC/Nalbari for seeking redressal . On 30-3-99 the honourable CAT/Guwahati issued interim order and stayed the operation of impugned order No.B/A-19/Ch-II dtd. 25-02-99 and order of transfer of Accounts line to General line dtd. 02-02-99 till 2-4-99. I immediately submitted an application together with the CAT/Guwahati's interim order to the SPC/ Nalbari through postmaster Barpeta H.C. on 6-4-99.

Contd.2.

Attested

[Signature]

11/2/11

But the postmaster ^{did} not allow me to join Barpeta H.C. rather he sent me to Barpeta H.C. as a temporary post. Dtd. 10-3-2000.

5. That Sir, the CAT/Guwahati Bench passed another interim order on my application No.88/99 on 9-4-99 ~~ext~~ mentioning that interim order dtd. 30.3.99 of the Misc petition No.87/99 would continue till further orders. I submitted a representation along with the CAT/Guwahati order to the SPC/Nalbari on 17-4-99, for ~~doing~~ ^{doing} needful and to post me as Accountant. The SPC/Nalbari did nothing in the matter and as a result, I could not join duty inspite of having interim order of CAT/Guwahati also.

6. That Sir, the observation of the circle office as intimated to me vide SPC/Nalbari No. B 190/Ch-II Dtd. 26-12-2000 that I did not join my new post as sub-postmaster, Shantinagar S.C. was out of question since I filed an application against the order of my transfer to Shantinagar S.C. in the honourable CAT/Guwahati.

7. That Sir, it is a fact that I rejoined Barpeta on 24-3-2000 as PR(I) the normed-based supervisory post and higher than that of Accountant, on receipt of the order CAT/Guwahati dtd. 10-3-2000 and in honour of the order of SPC/Nalbari No. B/A-13/Ch-III Dtd. 15-02-2000 and requested the SPO/Nalbari to post me as Accountant, Barpeta H.O. and to arrange for giving me pay and allowances w.e.f. 8-3-99 to 23-3-2000 in pursuance of order of the CAT/Guwahati. But the Supdt. of posts offices Nalbari-Barpeta Dn. Nalbari did not intend to treat the period w.e.f. 8-3-99 to 23-3-2000 as duty and to give me pay and allowances, as he intimated to me vide his letter No. B-190/Ch-II dtd. 26-12-2000.

8. That Sir, it is absolutely improper to opine that I did not rejoin at Barpeta H.C. nor pursued with authority for necessary order after having interim order of CAT/Guwahati. I submitted interim order of CAT/GH to the appropriate authorities in due time as stated in para 4 and 5 above. I could not rejoin at Barpeta H.C. as the Supdt. of Posts offices, Nalbari Barpeta Dn. did not arrange for my rejoining.

Attested

W. A. S.
Advocate

Contd. 3.

// 3 //

9. That Sir, ultimately the honourable CAT/Guwahati bench on the basis of my CA No. 68/99 set aside and quashed the order No. B/A-19/Ch-II dtd. 25-2-99 and order No. B/A-19/Ch-II dtd. 2-02-99 issued by the Supdt. of posts offices, Nalbari-Barpeta Dn. Nalbari and directed the department to give me all consequential benefits. Therefore, I appealed to SPC/Nalbari with a request to give me the pay and allowances for the period w.e.f. 8-3-99 to 23-3-2000 with submission of order of the CAT/Guwahati. He dishonoured the order of the honourable CAT/Guwahati and thereby violated its instruction and procedure. If I do not get duty pay and allowances for the stated period within a month and the authorities/ the department harass me, I will once again approach the CAT/Guwahati and file a contempt petition in this connection.

Therefore, I earnestly request your honour kindly to arrange to give me pay and allowances in ~~xxx~~ pursuance of the order of the CAT/Guwahati. And for this act of your kindness, I shall remain ever grateful to you.

Enclosure:-

1. Postmaster, Barpeta H.O. letter no. A2/Staff/9899
Dtd. 6-9-99 with application & Yours faithfully,
2. Application (In encision order) of 19-9-99
3. Memo. no. B/A-19/Ch-II Dtd. 25-2-99
Dtd. 2-02-99
4. Do

(Hiranmay Kakati)
PRI(P), Barpeta H.C.

Copy to:

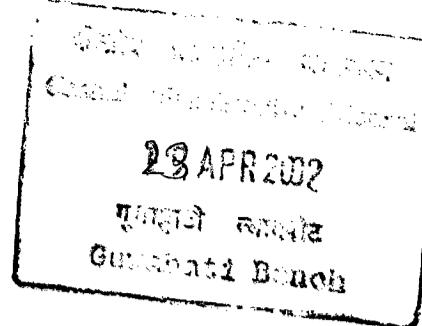
1. The Supdt. of posts offices, Nalbari-Barpeta Division, Nalbari - 781335 for favour of kind information & necessary action.

Yours faithfully,

(Hiranmay Kakati)
PRI(P)
Barpeta H.C.

Attest

W. D. Sen
Advocate.



filed by 29/4/02
B.C. Pathak
(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

O.A. NO. 448 OF 2001.

Shri Hiranmay Kakati

..... Applicant.

- Vs -

Union of India & Ors.

..... Respondents.

(Written Statements filed by the respondents
No. 1, 2 and 3).

The Written Statements of the respondents are
as follows :

1. That a copy of the O.A. No. 448/2001 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being similar, common written statements are filed for all of them.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.
3. That with regard to the statements made in para 1, 2 and 3 the respondents state that these being matters of records and law, the respondents have no comments to offer here. The actions of the respondents are explained ~~herein~~

herein below in this written statement.

4. That with regard to the statements made in para 4.1, the respondents state that the transfer order of the applicant dated 25.02.99 was materialized earlier on 08.03.99 before receipt of the interim order dated 30.03.99 passed by the Hon'ble CAT, Guwahati in MP No. 87/99 in the OA No.88/99. The copy of the said order dated 30.03.99 was actually received by the answering respondent on 22.04.99 for which the action of respondents became *fumictus officio* before the stay order dated 30.3.99.

That the applicant while availing leave was posted as PRI(P) (Public Relation Inspector (Postal), Barpeta (at the same station/same office of his earlier incumbency) vide the Respondent's order dated 15.02.2000 due to actual shortage of staff in the Division before the receipt of the order dated 10.03.2000 passed by Hon'ble CAT/GH in disposing the O.A. No.88/99. The applicant accepted the order dated 15.02.2000 without any objection/dissatisfaction considering the prevailing situation.

The contention of the applicant that the period which was not allowed to join has not been regularized is not true. As submitted earlier, the transfer order of the applicant was materialized on much earlier date than the order passed by the Hon'ble CAT. It is to submit that the applicant remained out of office during the period willfully and performed no work for which the period of absence can not be regularized except by granting of admissible leave. The matter has also been referred to the Circle Head, i.e. the Chief PMG, Assam.

Assam Circle, Guwahati, (Respondent No.2) who in turn decided vide letter no. vig/5/xii/98 dated 14.05.2001 (copy enclosed) that the Deptt. is not liable for the period of the absence from 08.03.99 to 23.03.2000 to grant him duty pay & allowances. However, the department decided to grant him duty pay & allowances. However, the department decided to grant him leave as admissible to settle the case. The applicant was accordingly informed under letter No. B-190/Ch-II dated 17.05.2001 (copy Annexed) and thereafter nothing has been received by the answering respondent.

5. That the respondents have no comments to offer to the statements made in para 4.2 of the application.

6. That with regard to the statements made in para 4.3, 4.4, 4.5 the respondents state that since the applicant accepted the BCR scheme introduced under DG(Posts) letter No.22-1/89-PE-1 dated 11-10-91 the transfer order dated 25.02.99 of the respondent was in order. There exists no distinctions of P0-RMS Accounts cadre and General cadre when one belongs to the said cadre is promoted under BCR scheme as clarified in the Dte's letter No. 44-60/90-SPB-II dated 24.09.96. (Copy of letter dated 11.10.91 and copy of letter dated 29.09.96 are enclosed as Annexure - R1 and R2 .

7. That with regard to the statements made in para 4.6, the respondents state that since the introduction of the Biennial cadre Review Scheme (BCR) under DG(P) letter No. 22-1/89-PE-1 dated 11-10-91 Postal Assistant, PA(Savings) and PO & RMS Accountant constitutes into one group with prospect for promotion in the said BCR scheme. As such, the distinction claimed by the applicant was in no case existed as he accepted the BCR promotion.

8. That with regard to the statements made in para 4.7 and 4.8 the respondents state that there is no provision for calling option as per the order dated 11.10.91 for consideration of allowing BCR and no such option as claimed by the applicant was found called for from the Respondents. Hence the contention of the applicant has no base and against the principle of rules.

9. That with regard to the statements made in para 4.9, the respondents have no comments.

10. That with regard to the statements made in para 4.10, 4.11, 4.12 and 4.13 the respondents state that the applicant was relieved earlier than the receipt of the interim order dated 30.03.99 passed by the Hon'ble CAT. Again the applicant was posted as Public Relation Inspector, at Barpeta HO (BCR) well before passing the order dated 10.03.2000 and the applicant accepted the post without least objection. Moreover, the representation dated 17.04.99 does not appear to have been received by the answering respondent.

✓ The applicant accepted the posting of PRI(P), Barpeta without any objection and as there is no distinction in between the Accountants and General line pursuant to promotion to the BCR scheme, the question of permissibility does not arise.

11. That with regard to the statements made in para 4.14, the respondents state that no such representation appears to have been received or pending with the Respondents.

12. That with regard to the statements made in para 4.15 and 4.16 the respondents state that the applicant accepted the promotion in BCR scheme and as accepted the posting of PRI(P) which also a norm base post to be filled by the BCR hand, there found no irregularity. As regards, allowing of consequential benefits it is submitted that as the applicant has already getting the pay and allowances under BCR scheme he is already availing the benefits. Regarding regularization of the period from 08-03.99 to 22.03.2000 it is submitted that as during said period the applicant remained absent willfully the question of regularization does not arise as observed by the respondent No.2. However, the applicant was informed on 17.05.01 that the period may be regularized by granting of leave admissible if applied. (Copy of letter dated 17.05.01 is annexed as Annexure - R₃).

13. That with regard to the statements made in para 4.17 ~~xx~~, the respondents state that the representation of the applicant has been considered by the Respondent No.2 and decided that the period of absence from 08.03.99 to 23.03.2000

was his willful action. However, the respondent decided to grant him leave as admissible and the decision was intimated to the applicant under answering Respondent's letter dated 17.05.2001.

14. That with regard to the statements made in para 4.18, 4.19, 4.20, the respondents state that as submitted above that the applicant accepted his posting as PRI(P) Barpeta the respondent did not further file appeal etc. against the order. The applicant being a BCR person, there stands no distinction between General and Accounts Cadre as the applicant accepted his posting as PRI(P) Barpeta without any objection. Contention of the applicant is not found justified now. As regards regularization of the period as the applicant remained absent at his own will, this can not be regularized except by granting him leave if applied for.

15. That with regard to the statements made in para 5.1 to 5.5, the respondents state that under the facts and circumstances of the case, the grounds shown by the applicant cannot sustain in law. Hence the application is liable to be dismissed with cost.

16. That the respondents have no comments to statements made in para 6 and 7 of the application.

17. That with regard to the statements made in para 8.1 to 8.4 and 9, the respondents state that in view of the facts and circumstances of the case, the applicant is not

~~ixxibisextaxbaxdismissee~~

entitled to any relief whatsoever as prayed for and the application is liable to be dismissed with cost as devoid of any merit. The applicant is also not entitled to any interim order as prayed for.

In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall further be pleased to dismiss the application with cost.

Verification.....

VERIFICATION

I, Shri Nirayn Das ^{Nalbari Borpeta division}, presently working as the Superintendent of the post office, ^{Nalbari Borpeta division}, being competent and duly authorised to sign this verification, do hereby solemnly affirm and state that the statements made in para 1 to 17 are true to my knowledge and belief, those made in para — being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 23rd day of April, 2002 at Guwahati.

Nirayn Das,
Deponent.

Superintendent of Post Office,
Nalbari, Borpeta Division
Nalbari-781335